

A. G. Contract No. KR911266TRD  
ECS File: JPA 91-50  
Project: 202 MA 000 H 3055 01D  
202 MA 000 H 3055 01C  
Section: Spook Hill Park, Mesa

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF MESA

THIS AGREEMENT is entered into 1 MAY, 1992,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
CITY OF MESA, acting by and through its City Council (the  
"City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The City is empowered by Arizona Revised Statutes  
Section 48-572 and City Charter Article I, Section 103 to enter  
into this agreement and has by resolution, a copy of which is  
attached hereto and made a part hereof, resolved to enter into  
this agreement and has authorized the undersigned to execute  
this agreement on behalf of the City.

3. The State and the City desire to participate in the  
design, construction and establishment of a wildlife habitat  
mitigation as required by 404 Permit No. 88-149-RD, at an  
estimated cost of \$1,500,000.00, hereinafter referred to as the  
Project, all at State expense.

THEREFORE, in consideration of the mutual agreements expressed  
herein, it is agreed as follows:

|  |
|--|
| NO. <u>16576</u>                             |
| FILED WITH SECRETARY OF STATE                |
| Date Filed <u>05/01/92</u>                   |
| <u>Richard Mahoney</u><br>Secretary of State |
| By <u>Wm. J. Greenwood</u>                   |

## II. SCOPE OF WORK

### 1. The City will:

a. Prepare landscape architectural plans for the Project and submit them to the State for review and approval.

b. After State, Arizona Game and Fish Department and U.S. Fish and Wildlife Services' approval of the design, construct the Project using State funds. Invoice the State, no more often than monthly, as necessary to amortize the design, construction and establishment of the Project. Provide the State bid and contract documents necessary for reimbursement.

c. Furnish all water and related facilities for habitat installation, planting and construction, and all water thereafter necessary to properly establish and maintain the habitat areas.

d. With the approval and concurrence of the State, contract for the construction of the Project and the establishment maintenance of the habitat landscaping and irrigation system associated with habitat areas. Be responsible for any construction contractor claims for extra compensation attributable to the City.

e. Continuously maintain the habitat landscaping and irrigation system according to the specifications for habitat construction and maintenance. Maintenance shall consist of the care of all mitigation landscaping in accordance with accepted habitat horticultural practices, keeping all areas free of undesirable weeds, grasses and litter, applying irrigation water, furnishing and applying sprays and dust to combat diseases and other pests, pruning and replanting, as required, to maintain the habitat landscaping as it was designed, testing, adjusting, repairing and operation of the irrigations system, and the repair of all erosion. Maintenance shall be performed during the five-year habitat establishment period to meet the acceptance criteria as approved in the construction and maintenance plans.

### 2. The State will:

a. Review and approve the design documents and provide comments as appropriate.

b. Reimburse the City the actual costs of the Project, in an amount not to exceed \$1,500,000.00, within thirty (30) days after receipt and approval of invoices. During the five (5) year establishment phase, the City shall invoice the State no more often than every six (6) months for maintenance of the Project.

c. Be responsible for any contractor claims for extra compensation attributable to the State.

### III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this agreement shall remain in full force and effect for a period of five (5) years from the completion of construction of the habitat areas, unless terminated earlier by mutual consent of the parties hereto or unless this agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. It is understood and agreed that in the event this agreement is terminated by the City, the State shall in no way be obligated to maintain said landscaping. If this agreement is terminated by the State, the City shall not be obligated to continue the wildlife mitigation and irrigation Project nor reimburse the State for the cost.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518 (B) and (C).


6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Room 616E  
Phoenix, AZ 85007

RESOLUTION

BE IT RESOLVED on this 12th day of February 1992, that I, CHARLES E. COWAN, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Mesa for the purpose of defining responsibilities for the design, construction and maintenance of a wildlife mitigation project at Spook Hill Park in the City.

Therefore, authorization is hereby granted to draft said agreements which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

  
to CHARLES E. COWAN  
Director

City of Mesa  
City Manager  
PO Box 1466  
Mesa, AZ 85211


7. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

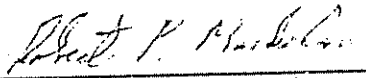
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF MESA

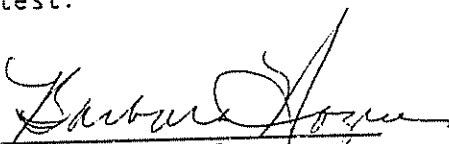
STATE OF ARIZONA

Department of Transportation

By   
CHARLES K. LUSTER  
City Manager

By   
ROBERT P. MICKELSON  
Deputy State Engineer

Attest:

By   
BARBARA HOGUE  
City Clerk



CITY OF  
MESA

# *Certificate of CITY CLERK*

I, BARBARA HOGUE, THE DULY APPOINTED, QUALIFIED AND ACTING CITY CLERK OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, DO HEREBY CERTIFY THAT THE ATTACHED COPY OF RESOLUTION NO. 6409, ENTITLED:

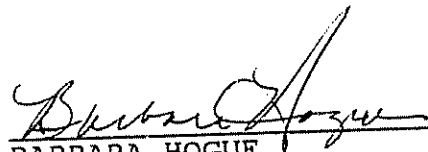
RESOLUTION NO. 6409

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION REGARDING THE DEVELOPMENT AND FUNDING OF A WILDLIFE HABITAT MITIGATION AREA AT SPOOK HILL DISTRICT PARK

IS A TRUE, CORRECT AND COMPARED COPY OF THE ORIGINAL OF RECORD, AND ON FILE IN THE OFFICE OF THE CITY CLERK OF THE CITY OF MESA, ARIZONA.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF THE CITY OF MESA, MARICOPA COUNTY, STATE OF ARIZONA, THIS 03 DAY OF FEBRUARY, 1992.



  
BARBARA HOGUE  
CITY CLERK

RESOLUTION NO. 6409

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION REGARDING THE DEVELOPMENT AND FUNDING OF A WILDLIFE HABITAT MITIGATION AREA AT SPOOK HILL DISTRICT PARK.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That the intergovernmental agreement between the City of Mesa and the Arizona Department of Transportation, for the development and funding of a wildlife habitat mitigation area at Spook Hill District Park, is hereby approved.

Section 2: That the City Manager is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 27<sup>th</sup> day of January, 1992.



ATTEST:

*Dorinda Hoyle*  
City Clerk

APPROVED:

*Mike "Peggy" Rutch*  
Mayor

JPA 91-50

APPROVAL OF THE MESA CITY ATTORNEY

*I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF MESA, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.*

DATED this 31<sup>st</sup> day of Jan, 1991.

Neal Butts

City Attorney

1979j





STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

April 23, 1992

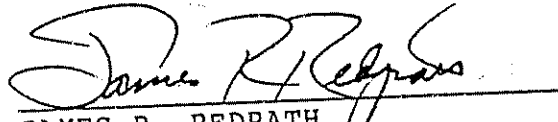
INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR91-1266-TRD, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 23<sup>rd</sup> day of April, 1992.

GRANT WOODS  
Attorney General

  
JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:ls  
7333G/54